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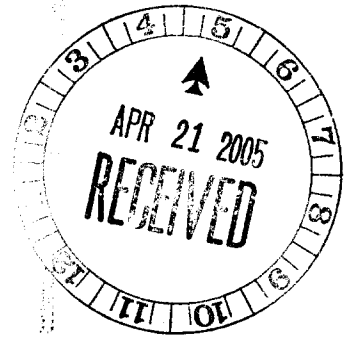
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April 21, 2005

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Public Record



Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

Re: Docket No. 42060 (Sub-No. 1)  
North America Freight Car Association, et al. v. BNSF Railway Company

Dear Secretary Williams:

The Board's Order served March 18, 2005 in the captioned proceeding contains a revised procedural schedule pursuant to which responses to discovery were due on April 15, 2005, notices of depositions were due on April 21, 2005, and depositions were to be completed by May 20, 2005.

On April 15, Complainants made a partial discovery response to BNSF, and have continued to supplement that response, although Complainants' discovery responses have not yet been completed. There are number of reasons for the partial, rather than full, response, including the volume of discovery propounded by BNSF and the fact that several of the Complainants had to seek responsive materials throughout widespread business units and diverse locations. BNSF itself has made partial discovery responses on discovery deadlines in other cases, and in that respect Complainants' have acted no differently than BNSF. Complainants will provide a detailed explanation of the status of their discovery responses should that prove necessary.

BNSF, also on April 15, delivered its discovery responses to Complainants' counsel, including over 15,000 pages of unindexed documents (until the omission of an index was called to BNSF's attention and corrected on April 19). On April 19, Complainants informed BNSF in writing of certain problems in the manner of the BNSF discovery responses, including the fact that BNSF had not identified individuals with knowledge regarding specific subjects of discovery, as requested, thereby thwarting Complainants' ability to accurately and fully notice depositions of BNSF personnel. Complainants informed BNSF on April 19 that all persons mentioned in BNSF's interrogatory responses were being noticed for depositions, but informed BNSF that Complainants would narrow

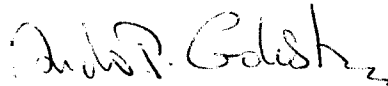
that list upon receiving more complete information from BNSF regarding areas of each individual's knowledge.

BNSF's lead counsel, Mr. Jenkins, is out of the country on vacation this week, and will miss the deadline for noticing depositions of Complainants' representatives, possibly even where discovery responses have been completed. The fact that not all of Complainants' interrogatory answers have yet been served on BNSF also leaves BNSF without knowledge of certain individuals who might be deposed on behalf of particular Complainants.

It is evident not only that deposition notices cannot be executed by April 21, but also that it makes little sense to attempt to do so unilaterally on the part of Complainants. BNSF arguably cannot determine at this time how many depositions it would like to take and Complainants lack sufficient information to properly identify deponents employed by BNSF for reasons advanced above. The interests of both parties will be served if deposition schedules can be coordinated between counsel.

Whether these events will allow depositions to be completed by May 20, 2005, the date established by the Board's March 18 Decision for the completion of discovery, remains to be seen. Complainants do not believe that any formal action by the Board is necessary at this time with respect to the procedural schedule. However, if the Board disagrees, then Complainants would ask that this letter be treated as a request for suspension of the date on which notices of depositions are due, pending discussions between counsel for Complainants and BNSF. Complainants and BNSF appear to be in agreement that negotiations and methods such as mediation of discovery disputes by the Board's staff should be exhausted before recourse is had to motions to compel.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Andrew P. Goldstein", with a stylized flourish at the end.

Andrew P. Goldstein  
Attorney for Complainants

cc: All Parties